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Aaron Wininger5/12/03
5/22/03

In Re Application of:	
Shigehiro Kondo	Examiner: Steven Weinstein
Serial No.: 09/887,916	Art Unit: 1761
Filed: June 21, 2001	
For: Method for Bottling Sake and Bottled Sake	

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

GROUP 1700

MAY 20 2003

RESPONSE

Sir:

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In response to the office action mailed on February 26, 2003, please consider the following remarks:

Claims 1 – 9 were examined in this case. Claims 1 – 9 have been rejected.

Claims 1 – 9 are currently pending.

Applicant requests the Examiner's acknowledgement of the Applicant's claim of priority under 35 USC § 119 to Japanese patent application no. 2001-38108 by inventor Shigehiro Kondo, entitled "The Method of Sake Bottling and Bottled Sake," filed on February 15, 2001. A claim for priority was made on the second page of the specification as filed and in the inventor's declaration.

In the office action, the Examiner rejected claims 1 – 9 under 35 USC § 103(a) as being unpatentable over Krubicza (EP878536) in view of applicant's admission of prior art, Spack (GB 925305), Matsuki (JP 11-169160), further in view of Kanai (JP 5-76340),

Mikami et al. (JP 4-62365) and Richter (DE 3532160). Applicant respectfully traverses this rejection.

Claim 1 is patentable over the cited art by at least reciting:

disposing SAKE in a translucent bottle;
disposing an ear of rice in the translucent bottle; and
sealing the translucent bottle.

In contrast, Krubicza teaches an alcoholic drink comprising mainly spirits (fermented from grain) or mead (fermented from water and honey) with an additive of 2 – 30% by volume of hemp syrup made from hemp leaves. The drink further contains one whole or coarsely shredded hemp leaf. In other words, Krubicza in fact teaches adding plant material to a beverage that has an additive made of the same plant material.

Krubicza does not teach adding plant material (e.g., a grain) to an alcoholic beverage (spirits) from which the alcoholic portion of the beverage is fermented, as claimed in claim 1. Specifically, claim 1 claims disposing sake in a bottle and disposing a rice ear, which is the same plant material that sake is fermented from, in the same bottle. Claim 1 does not claim disposing a non-alcoholic additive, such as hemp syrup, to the sake and then adding plant material from which the additive is made. In fact, sake, like wine, generally does not include additives that alter the taste of the sake. Therefore, modifying Krubicza would not generate the invention of claim 1 because Krubicza does not teach and cannot be modified to adding plant material to an alcoholic beverage wherein the alcoholic portion of the beverage is fermented from the plant material. Accordingly, Applicant submits that claim 1 is patentable over Krubicza.

With respect to the other references showing plant material disposed in a liquid, none of these references show disposing plant material into a beverage from which the beverage is derived from. For example, Spack only discloses fruit disposed within a bottle, wherein a beverage can also be disposed within. More specifically, Spack discloses a branch of cherries disposed within the bottle (lines 62 – 64) and liqueurs disposed within the same bottle (lines 28 – 34). As liqueurs are generally distilled from grapes, not cherries, (as compared to fermented like sake from rice) and Spack does not teach the use of grapes within the bottle, Applicant submits that claim 1 is patentable over Spack.

Similarly, Matsuki teaches disposing a fruit (i.e., pear or apple) within a bottle containing Shochu, a Japanese alcoholic beverage made from potatoes or grains. Accordingly, Matsuki does not teach disposing plant material from which an alcoholic beverage is fermented into the beverage and therefore, claim 1 is patentable over Matsuki.

Claim 1 is also patentable over Kanai because it teaches adding a fish or animal product to a beverage and does not disclose adding any plant material.

Claim 1 is also patentable over Mikami et al. because Mikami et al. only teaches disposing an edible plant flower within ice and makes no mention of disposing the plant flower within an alcoholic beverage wherein the beverage is fermented from the edible plant flower.

Claim 1 is also patentable over Richter because Richter discloses adding flowers to perfume, which is non-edible.

Therefore, Applicant submits that claim 1 is patentable over the references cited, whether considered singly or in combination. Further, claims 2 – 6 are patentable for at least the same reason as they depend from or through to claim 1. In addition, claims 7 – 9 should be patentable over the cited references as they recite language substantially similar to claims 1 – 6.

Further, the Examiner made no mention of reasons for rejection of claim 2 and Applicant therefore assumes that Examiner meant to indicate that claim 2 is allowable.

As all claims are believed to be allowable, Applicant respectfully requests a notice of allowance to be issued in this case.


If the Examiner has any questions or needs any additional information, the Examiner is invited to telephone the undersigned attorney at (650) 843-3375.

If for any reason an insufficient fee has been paid, the Assistant Commissioner is hereby authorized to charge the insufficiency to Deposit Account No. 05-0150.

Respectfully Submitted,
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By:


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